

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PATRICIA KAMMEYER, et al. : CASE NO: 1:01CV00649

Plaintiffs, : Judge Spiegel
vs. : Magistrate Judge Black

CITY OF SHARONVILLE, OHIO, et al. :

Defendants :

**MEMORANDUM OF DEFENDANT, CITY OF SHARONVILLE,
IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO
ADMIT TESTIMONY OF SIMON LEIS ON ROUTINE BUSINESS PRACTICE**

Plaintiffs filed a Motion in Limine to Admit Testimony of Simon Leis on Routine Business Practice on September 5, 2006. (Doc. 333). In addition, plaintiffs filed subpoenas to require the attendance of Simon Leis, John Jay, Terry Gaines, and Richard Gibson, from the Hamilton County Prosecutor's Office, to testify at trial. A Motion to Quash those subpoenas was filed by the Hamilton County Prosecutor's Office on September 21, 2006. (Doc. 338). The Motion to Quash sets forth the reasons plaintiffs' Motion in Limine to Admit the Testimony of Simon Leis should be denied, and the Memorandum filed by Hamilton County in support of the Motion to Quash is incorporated herein by reference.

Plaintiffs state in their Motion that they request Simon Leis' testimony for the limited purpose "of testifying about the routine practice of the Hamilton County Prosecutor's Office during his tenure as county prosecutor." The United States Court of Appeals for the Sixth Circuit has already ruled that such testimony is protected by the work product and attorney/client privileges. Additionally, that testimony would be of no probative value in this case and would lead the jurors to speculation. Rule 406 of the Federal Rules of Evidence which plaintiffs seek to invoke provides for evidence of a habit or routine practice to prove that the conduct of a

person or organization on a particular occasion was in conformity with that habit or routine practice. Presumably, plaintiffs intend to question Leis or other prosecutors regarding what their routine practice would have been if they had been given certain information. That hardly fits within the definition of habit or routine practice. On the contrary, each criminal case is different, and the judgments made by the Prosecutor's Office would have to be made on a case by case basis. That does not fit within Rule 406 and also invades the prosecutorial work product.

Forcing the Hamilton County Prosecutor's Office to testify in this case would jeopardize the trial of Albert Schuhholz on the criminal charges for which he has been indicted by the Hamilton County Grand Jury. The practices and procedures of the Prosecutor's Office could become issues in that case, and Simon Leis or other prosecutors could become witnesses.

Based on the foregoing, Defendant, City of Sharonville, respectfully requests that the Court deny Plaintiffs' Motion in Limine to Admit Testimony of Simon Leis on Routine Business Practice.

s/Lawrence E. Barbiere

Lawrence E. Barbiere (0027106)
 Michael E. Maundrell (0027110)
 Schroeder, Maundrell, Barbiere & Powers
 119 Mason Road, Suite 110
 Cincinnati, Ohio 45249-3703
 (513) 583-4210 - telephone
 (513) 583-4203 - facsimile
 email: lbarbiere@smbplaw.com

**Lead Trial Counsel For Defendant City of
Sharonville, Ohio**

s/Thomas T. Keating

Thomas T. Keating, Esq. (0011359)
 Keating, Richie & Swick
 8050 Hosbrook, Suite 200
 Cincinnati, Ohio 45236
 (513) 891-1530 - telephone
 (513) 891-1537 - facsimile
tkeating@krslawyers.com

Co-Counsel For Defendant City of Sharonville, Ohio

s/Brian E. Hurley

Brian E. Hurley (0007827)
Robert J. Gehring (0019329)
Crabbe, Brown & James LLP
30 Garfield Place, Suite 940
Cincinnati, Ohio 45202-4359
(513) 784-1525 - telephone
(513) 784-1250 - facsimile
Bhurley@cbjlawyers.com
Rgehring@cblawyers.com

Co-Counsel for Defendant City of Sharonville, Ohio

s/Randolph H. Freking

Randolph H. Freking, Esq. (0009158)
Freking & Betz
215 East Ninth Street, 5th Floor
Cincinnati, Ohio 45202
(513) 721-1975 - telephone
(513) 651-2570 - facsimile
email: rfreking@frekingandbetz.com

**Co-Counsel For Defendant City of Sharonville,
Ohio**

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2006, a copy of the forgoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Lawrence E. Barbiere

Lawrence E. Barbiere